

**CONFIDENTIAL**

OGC HAS REVIEWED.

8 March 1951

MEMORANDUM FOR: DEPUTY PERSONNEL DIRECTOR

SUBJECT: Consultant Appointment for  
Retired Officers -

25X1A

1. Section 62 of Title 5 of the United States Code Annotated, as amended, in effect provides that an officer retired for longevity shall not be appointed to or hold another "office to which compensation is attached" unless specially authorized by law. The Comptroller General has ruled that the position of intermittent consultant on a fee basis is not an "office" within the meaning of this Section, but he emphasized that the three elements which are the basis of the exception must be supported by the facts, i.e. the service must be truly intermittent, must be purely consultative and the compensation must be an actual fee and not a salary rate. (28 Comp. Gen. 381)

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2. The Personnel Action Request submitted in the case of [REDACTED] is proper on its face, but the Comptroller has repeatedly held that it is the facts in each case and not the record which controls. If there are facts within your knowledge which indicate either that the service to be rendered is not intermittent or that the position contemplates administrative, staff or command functions as well as consultant activities, or if the compensation is based on hourly, weekly or monthly salary rates, then the appointment requested would not be within the exceptions to Section 62 of Title 5 of the United States Code. In such case, the appointment as such is prohibited by law. The penalty, however, is primarily on the individual who, in the event of an illegal appointment, would be subject to recovery back either of the retired pay for each day for which Consultant's fees were paid or recovery back of the payments made under the improper appointment.

LAWRENCE R. HOUSTON  
General Counsel

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Attach: [REDACTED]

LRHouston/ml1

cc: Subject  
Chrono

Legal Decision  
Vital Document

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# MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

Attachment